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HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.Appeal No.717/2003

APPELLANT

Anil Kumar s/o Shri Sukhnath
Ram, aged about 25 years, R/o
village-Bodhni Jharia, Police
Station-Jainagar, District-
Surguja(CG)

Versus

RESPONDENT

State of Chhattisgarh
Through:-The Police Station,
Vishrampur, District Surguja(CG).

Appearance:

Shri Rakesh Pandey, counsel for the appellant.

Shri Ashish Shukla, Govt. Advocate/ Additional Public
Prosecutor for the State.

ORAL JUDGMENT

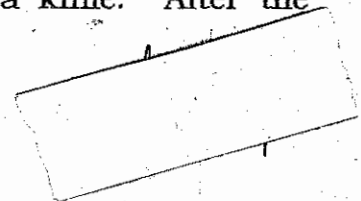
(18.05.2007)

SUNIL KUMAR SINHA, J.

Heard.

1. This appeal is directed against the judgment of conviction and order of sentence dated 30.4.2003 passed in Sessions Trial No.161/2002 by the 1st Additional Sessions Judge, Surajpur, District Surguja (C.G.) whereby the said Court after holding the appellant guilty for the offence punishable under Section 307 I.P.C., sentenced him to undergo R.I. for 7 years and to pay a fine of Rs.500/-, in default of payment of fine, to further undergo R.I. for 2 months.

2. The case of the prosecution is that the victim namely Ganeshwari (P.W.9) is the wife of appellant. On 23.01.2002 at about 15 - 16 hours both were going to the in-laws place of the appellant. On the way, on some dispute, the appellant caught hold of the hair of the victim and threw her on the ground, thereafter he assaulted on her neck with a knife. After the



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assault, thinking that she is dead, he left the victim on the way and fled from the scene of occurrence. The victim anyhow traveled to some distance and met one Rajan Toppo (P.W.1). Rajan Toppo saw the injury of the victim. The victim was unable to speak. He immediately took her to the police station Bishrampur. A *Sanha* report was lodged in the police station vide Ex.P.8/C. Based on which, the First Information Report Ex.P.9 was registered. The victim was sent for medical examination to C.H.C. Bishrampur, where she was examined by Dr. Kamlesh Tamrakar (P.W.3) on 23.01.2002, who prepared injury report vide Ex.P.2. According to him, he noticed one incised wound on her neck admeasuring 9 cm x 3 cm x 5 cm. The victim was semi-unconscious and was under shock, therefore, he referred her to District Hospital, Ambikapur, where she was again examined by Dr. Ramesh Patnaik (P.W.2), who prepared injury report Ex.P.1 on 25.01.2002. According to the said report, he also noticed one incised wound admeasuring 6" x ½" x full thickness, on anterior part of neck 2" above suprasternal notch. The Trachea exposed with a circular hole of ½" diameter. The injury was said to be caused by sharp cutting weapon and it was grievous in nature. Thereafter, the weapon of the offence i.e., knife was also seized which was of 6 ½" in length and 2 ½" in breadth. The sharp end was of about 2 ½", the blunt end was of about 4 ½". This knife was seized on the memorandum of the appellant vide Ex.P-4 and it was examined vide Ex.P-3. Thereafter the statements of witnesses were recorded and after formal investigation, the charge-sheet was filed in the Court of A.C.J.M., Surajpur, from where it was committed to the Court of Sessions and in turn it was received on transfer by the 1st Addl. Sessions Judge, Surajpur, who conducted the trial and passed the impugned judgment. It is against this judgment of conviction and order of sentence, the appellant has filed this appeal.



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3. The conviction and sentence of the appellant is based upon the testimony of P.W.9 Ganeshwari Bai, supported by the testimony of P.W.1 Rajan Toppo, further supported by the evidence of two Doctors namely Ramesh Patnaik (P.W.2) and Kamlesh Tamrakar (P.W.3).

4. Learned counsel for the appellant argues that in the facts and circumstances of this case, the participation of the appellant is doubtful. He also argues that an offence under Section 307 I.P.C. would not be made out and the appellant be acquitted.

5. On the other hand, learned State Counsel opposes these arguments. He supports the judgment of conviction and order of sentence of the Sessions Court.

6. I have heard learned counsel for the appellant and have also perused the records of the Sessions Case.

7. So far as participation of this appellant is concerned, it comes in the evidence of the victim Ganeshwari (P.W.9) that the appellant is her husband. On the fateful day, both were going to the in-laws place of the appellant on a bicycle. When they reached near the forest nursery, on the way, they have got down from the bicycle for taking some rest and they were going on foot. When she was moving forward, the appellant came from her backside and firstly he caught hold of her hair and thereafter threw her on the ground and then he assaulted on her neck with a knife. She deposed that due to the said assault, she became unconscious and when she regained consciousness, she found that the appellant is not there. She, anyhow, reached upto colliery area where she met a person who asked her as to who assaulted her, on which she replied that her husband assaulted her. On which, the said person took her to Jainagar Police Station. She further deposed that she was unable to speak due to injury. She has also deposed vide paragraph 6

that on earlier occasion also the appellant had pushed her in the Well. She deposed that she was issueless; therefore, the appellant was doing all this with her. The defence has not been able to bring any such factor in the cross-examination of the victim which may lead to discredit her testimony. Rajan Toppo (P.W.1) deposes that when he was coming from his duty, Mine No.11, he saw that a girl was standing on the road. She was unable to speak due to cut injury on her throat. She was telling something by gestures. Therefore, he took the girl to the police station on his bicycle. On the basis of this evidence, it is established that, in fact, the appellant has assaulted the victim and the injuries received by her, were caused by the appellant.

8. So far as offence under Section 307 I.P.C. is concerned, it has been held by the Apex Court in the matter of **Sarju Prasad v State of Bihar AIR 1965 S.C. 843** that in order to bring the offence home to accused, the prosecution must establish that his intention was one of the three kinds mentioned in Section 300 I.P.C. The state of mind of the accused has to be deduced from surrounding circumstances and motive would be a relevant circumstance and where the evidence is not sufficient to establish with certainty, existence of requisite intention of knowledge of accused, the accused can be convicted only under Section 324 I.P.C. and not under Section 307 of I.P.C.

9. In the matter of **Hari Kishan & State of Haryana v. Suikhbir Singh and others AIR 1988 S.C. 2127** the Apex Court further held that under Section 307 I.P.C., what the Court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without such ingredient being established, there can be no offence of "attempt to murder". Under Section 307 I.P.C. the intention precedes the act attributed to accused. Therefore, the

intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

10. In the present case, if we look into the evidence of the victim as also the evidence of the two doctors, it would appear that the victim, who was the wife, was badly assaulted by the husband. Firstly, the husband caught hold of the hair of victim and threw her on the ground and then he took out a knife and had cut the throat of the victim, the injury inflicted on the throat of the victim was so severe that she received an incised wound on the neck admeasuring 6" x ½" x ½" and trachea was exposed and a hole of ½" diameter was created. Certainly the knowledge and intention of the appellant can be gathered from his action and the injury sustained by the victim. The appellant had used a knife which was of about 7" length having a breadth of 2 ½". Undisputedly, this was a deadly weapon. Therefore, it can be easily inferred that the appellant attempted the life of his wife by using deadly weapon choosing one of the most vital parts of the body like neck and causing cut injury on the neck, due to which, the trachea was also cut and a hole of about ½" diameter was created, as a result of which, the victim became unconscious and she was even unable to speak. In the facts and circumstances of the case, an offence under Section 307 I.P.C. would be made out. In the opinion of this Court, the Sessions Court has committed no error of law by convicting the appellant under Section 307 I.P.C. and sentencing him to undergo R.I. for 7 years.

This appeal has no merit and the same is dismissed.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/